

# *Exhibit 1*

1           UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF NEW YORK  
3           - - - - -    x  
4           State Farm Mutual Automobile Insurance  
          Company and State Farm Fire and  
          Casualty Company,

**Plaintiffs,**

- against - Case No.  
1:17-cv-5845

21st Century Pharmacy, Inc.,  
8 Albert Alishayev,  
9 Iris Itskhakov a/k/a Istam Itskhakov,  
Peter Khaim a/k/a Peter Khaimov a/k/a  
Petr Khaimov,  
10 Tariel Begiyev,  
Express Billing & Collection Inc.,  
11 Anturio Marketing, Inc.,  
Logic Consulting, Inc.,  
12 P&K Marketing Services Inc.,  
A&P Holding Group Corp.  
13 New Business Resources Group Inc.,  
K&L Consultants Inc.,  
14 New Business Funding Inc.,  
TBM Solution Inc.,  
15 TAR Group Inc.,  
Personal Tech Inc.,  
16 Timothy Morley, D.O.,  
Azu A. Ajudua, M.D.,  
17 Vincentiu Popa, M.D., and  
Jo-Ann Shakarian, M.D..

## Defendants

22 575 Madison Avenue  
23 New York, New York  
24 30(b)(6) VIDEO-RECORDED DEPOSITION of  
25 21st CENTURY PHARMACY, INC. by  
ALBERT ALISHAYEV

Page 2

1

2 A P P E A R A N C E S :

3

4 KATTEN MUCHIN ROSENMAN LLP  
5 Attorneys for State Farm  
6 575 Madison Avenue  
7 New York, New York 10022-2585  
8 BY: JONATHAN MARKS, ESQ.  
9 CHRISTOPHER COOK, ESQ.

10

11

12 THE RUSSELL FRIEDMAN LAW GROUP, LLP  
13 Attorneys for Defendant  
14 3000 Marcus Avenue, Suite 2E03  
15 Lake Success, New York 11042  
16 BY: CHARLES HORN, ESQ.

17

18

19

20

21 ALSO PRESENT:

22

23 PHIL GLAUBERSON, Videographer

24

25

4                   A                   The reason why I'm sitting  
5                   here today.

## Q                    What does that mean?

7 A Because I got sued for it.

8 Q And that's why you stopped  
9 doing compound medications?

10 A Right. And -- (indicating).

11 Q Prior to about a year ago,  
12 between August -- between August 2013 and  
13 about a year ago, when you stopped doing  
14 compound medications, what portion of 21st  
15 Century's business was compound  
16 medications?

17                   A                   Very little, none, maybe,  
18                   2 percent.

19 Q And that's 2 percent based on  
20 what; based on volume of prescriptions,  
21 based on dollar value of prescriptions,  
22 based on what?

23 A Based on referrals.

24 Q Based on the number of  
25 patients?

1                   Albert Alishayev

2                   A            Yeah.

3                   Q            Okay. How about if we  
4                   consider it based on the dollar value of  
5                   prescriptions, between what -- what is the  
6                   relative value of compounds versus the  
7                   other services that 21st Century was doing,  
8                   how does it compare?

9                   A            I don't know.

10                  Q            Okay. How about the profit  
11                  margin, what is the profit margin on  
12                  compound medications?

13                  A            Significant.

14                  Q            Approximately, what is it?

15                  A            Depends.

16                  Q            Do you have any idea what it  
17                  is?

18                  A            No, I got to look at it first.  
19                  Each one varies.

20                  Q            Okay. How does the profit  
21                  margin on compound medications compare to  
22                  the other businesses of 21st Century?

23                  A            I'm not sure about that.

24                  Q            Well, was it the largest  
25                  profit margin of any -- of 21st Century's

1                   Albert Alishayev

2    lines of business?

3                   A            That's not true.

4                   Q            Well, that's my question --

5    I'm asking it as a question?

6                   A            Yeah.

7                   Q            I'm not making a statement.

8                   A            No.

9                   Q            What was it?

10                  No, it wasn't?

11                  A            No, it wasn't.

12                  Q            What line of business was the  
13    most profitable for 21st Century?

14                  A            It was tablets, it was  
15    patches, it was a lot -- a lot of stuff.

16                  Q            So your testimony is tablets  
17    and patches were --

18                  A            Also profitable.

19                  Q            Okay. The profit margin on  
20    tablets and patches was higher than the  
21    profit margin on compound medications?

22                  A            No, could be the same.

23                  Q            Could be the same?

24                  A            Or even more.

25                  Q            Well, which is it?

1                   Albert Alishayev  
2                   A            Could be both.  
3                   Q            Is it the same or more --  
4                   A            Because it's different --  
5                   different kinds of medications. There's a  
6                   lot of medications. There are some  
7                   medication that are high in fee schedule,  
8                   there are some medication with low fee  
9                   schedule. Some medication were --  
10                  overpassed the compounding, some won't.

11                  Q            Okay. Well, so then the  
12                  medication -- during the period of time  
13                  you're doing compounds, the medications on  
14                  which there was the highest profit margin,  
15                  sounds like included patches, some tablets,  
16                  and compounds; is that correct?

17                  A            Correct.

18                  Q            Okay. And I think I asked you  
19                  this, but I'm not sure.

20                  You don't know the profit  
21                  margin on compounds; is that correct?

22                  A            It varies.

23                  Q            Okay. What does it vary  
24                  between?

25                  A            Depends on the compound and

1                   Albert Alishayev

2                   the amount of compound.

3                   Q               Okay. What's the low end and  
4                   the high end in terms of profit margin?

5                   A               I need to look at it.

6                   Q               Okay. All right. Could it be  
7                   as high as 50 percent?

8                   A               Maybe.

9                   Q               Could it be as high as  
10                   80 percent?

11                   A               Maybe.

12                   Q               Could it be as high as  
13                   90 percent?

14                   A               Yes.

15                   Q               Okay. Were there any patches  
16                   that you could get 90 percent profit margin  
17                   on?

18                   A               Maybe.

19                   Q               Which ones?

20                   A               Varies, different kinds.

21                   Q               Well, can you tell me one?

22                   A               There's -- there's a lot of  
23                   patches, but I can't tell you if it's  
24                   90 percent or 100 percent or 20 percent. I  
25                   can just name you the patches.

1 Albert Alishayev

2 Q What was your deal? What was  
3 the -- what were the terms of your  
4 arrangement with a marketer?

5                   A                   Well, they would have to bring  
6    in work, introduce me to doctors, dinners,  
7    lunches.

8 Q And in exchange for that, you  
9 would pay them?

10 A Right.

11 Q And how would you pay them?  
12 How would the --

13                   A                   Flat fee, 5,000 I would start  
14                   them off, sometimes two, three.

## 15 Q Sometimes two, three?

16 A two or 3,000, it depends.

17 Q So there would be a flat fee  
18 per month, correct?

19 A Yeah.

20 Q Is that right?

21 A **Correct.**

22 Q And the marketers were  
23 expected to connect you with doctors; is  
24 that correct?

25 A Right.

1                   Albert Alishayev

2                   Q           Right?

3                   A           Correct.

4                   Q           And how would the performance  
5                   of a marketer be evaluated?

6                   A           I would ask who are the  
7                   doctors and run reports and see if they're  
8                   real or not because some of them are just,  
9                   you know, they just talk, say I know this  
10                  guy, that guy, and at the end of the month,  
11                  there's nothing coming in.

12                  This is why I have a probation  
13                  period, three months period. If I don't see  
14                  anything coming in, you're out.

15                  Q           So did you have a three-month  
16                  probation period with every marketer that  
17                  you worked with?

18                  A           Yeah.

19                  Q           And so what happens is, if I  
20                  understand right, the first time you sit  
21                  down with a marketer, the marketer says  
22                  these are the doctors that I can connect  
23                  you with, gives you a list of names of  
24                  doctors, right?

25                  A           Right.

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1                   Albert Alishayev

2                   Q           All right. When the marketer  
3                   provides you with the names of the doctors,  
4                   is that in writing or oral?

5                   A           Oral.

6                   Q           Okay. Is it ever in writing?

7                   A           Sometimes writing, yeah.

8                   Q           Okay. And then during the  
9                   probationary period, you would go back and  
10                  look at the list that had been provided by  
11                  the marketer to see whether prescriptions  
12                  came in from those doctors, correct?

13                  A           Some of the -- sometimes I  
14                  would already have doctors in the system  
15                  sending work and I would see if there's any  
16                  change.

17                  MR. HORN: Just need a quick  
18                  break.

19                  MR. MARKS: Off the record.

20                  THE VIDEOGRAPHER: Going off  
21                  the record. The time is 2:13 p.m.

22                  (A short recess was taken.)

23                  THE VIDEOGRAPHER: We're back  
24                  on the record. The time is 2:16 p.m.

25                  Q           So if you -- if you already

9 A **Correct.**

10 Q Okay. And if the marketer  
11 were to tell you orally who the doctors  
12 were they worked with, rather than giving  
13 you a list, would you write down somewhere  
14 the doctors that a particular marketer  
15 worked with?

16 | A Probably.

17 Q Okay. Well, you would have to  
18 because you're going to keep track of how  
19 those doctors performed to evaluate the  
20 performance of the marketer, right?

21 MR. HORN: Objection.

## 22 A Sometimes.

23 Q Where would you write down or  
24 where would you keep track of which doctors  
25 went with which marketers?

1                   Albert Alishayev

2                   So I will run this report for  
3       me to know what's going on. These are  
4       pending, resubmitting, need insurance  
5       information, so like this I have a report.

6                   Q            Okay. I understand that.

7                   But what I'm trying to  
8       understand is what -- what does the last  
9       column -- what is the last column mean?  
10      What is it? How do you -- what's the  
11      calculation that produces the last column,  
12      it's 25 percent of what?

13     A            25 percent out of the profit  
14     and the cost and all the other stuff.

15     Q            So you -- well, for example,  
16     if we're looking at the first line, the  
17     profit is 1134 -- \$1,134.90?

18     A            One second. Okay.

19     Q            All right. And are you  
20     saying, then, that 278 is 25 percent of  
21     that profit?

22     A            Minus 200.

23     Q            Right?

24                   MR. HORN: Just let the record  
25                   reflect that the witness is using a

1                   Albert Alishayev

2                   calculator.

3                   THE WITNESS: Is that okay?

4                   MR. HORN: No, I just have to  
5                   let the record reflect. I know we  
6                   have it on video, but.

7                   A            Okay. Yeah, 25 percent, I  
8                   need to sustain my business.

9                   Q            The last column is 25 percent  
10                  of your profits?

11                  A            25, 25 percent.

12                  Q            So you take the -- so what you  
13                  did is you take the profit column, and you  
14                  get 25 percent of that number and that's  
15                  the last column?

16                  A            Right.

17                  Q            Okay. And the reason you say  
18                  you want to know what 25 percent of your  
19                  profits are, you want to know what  
20                  25 percent of your profits are because  
21                  what?

22                  A            If it's feasible to even work  
23                  with this doctor, am I getting all my  
24                  paperwork. It says here status, denied,  
25                  30-day rules, for example, paid in full,

1                   Albert Alishayev

2    resubmitted, needs AOP and HIPAA, so I  
3    can't really --

4                   Q         Yeah, I -- what I'm trying to  
5    understand is why do you need to divide  
6    your profits essentially by four to do that  
7    calculation to figure out whether this  
8    doctor is profitable or not?

9                   A         To run this business, if I  
10   want to continue working with this doctor.

11                  Q         I understand.

12                  But explain to me, what's the  
13    reason -- what's the reason you divide your  
14    profits by four? Why do you need that --  
15    why do you need a number?

16                  Why do you need your profits  
17    divided by four to figure out whether this  
18    doctor is profitable?

19                  A         I need to see if I can  
20    continue working with this doctor.

21                  Q         And the only way you can do  
22    that is by dividing your profits by four?

23                  A         It could be by four, by five,  
24    the least is 25 percent.

25                  Q         Well --

1                   Albert Alishayev

2                   A           If I'm making less than that  
3                   based on -- because as you can see over  
4                   here, no insurance but the medication went  
5                   out. If it's all in yellow, then I'm good,  
6                   I don't want to work with this doctor.

7                   Q           Well, what you're -- but you  
8                   understand that 278, is not -- that's  
9                   not -- that doesn't mean that's a  
10                   25 percent profit margin, right, that's  
11                   just 25 percent of your total profits?

12                   A           Right.

13                   Q           All right. So what I'm trying  
14                   to understand is why would you divide your  
15                   profits by four to figure out whether it's  
16                   profitable? Why wouldn't you just look at  
17                   your total profits?

18                   A           Why not.

19                   Q           Is there any reason you can  
20                   think of other than "why not"?

21                   A           There's no reason, no.

22                   Q           Okay.

23                   A           It's my own report.

24                   Q           Okay.

25                   A           And then the statuses, that's

1 | Albert Alishayev

2 what I need to obtain.

4 A Is look at the status.

5 Q So what you do is -- so you  
6 create this report, you figure out what  
7 your profits are and you divide them by  
8 four because that's a helpful way for you  
9 to figure out if your business is  
10 profitable, correct?

11 A Correct.

12 Q Okay. And the first line item  
13 tells us that at least on this first  
14 compound, you made a profit of \$1,334.85;  
15 is that right, that was your profit, right?

16 A Right.

17 Q Okay. Now, why did 21st  
18 Century share this report, reflecting its  
19 profits. with the marketer?

20                   A                   So I'm not really reflecting  
21                   the profits, I am status, that's what I  
22                   need

23 0 Well =

24 A I need the status I could

share whatever I want. I just want to look

10 Q Okay.

11                   A                   And then I can see if I even  
12                   worth working with this doctor or with this  
13                   rep.

14 Q Okay. So your -- if I  
15 understand what you're saying, your --  
16 the -- the reason that you send this  
17 report --

20 Q Well, I'm asking you, you tell  
21 me.

22 A Right. You have a point  
23 there.

24 O I'm asking you, you tell me.

25 A yeah.

1                   Albert Alishayev

2                   Q            Why -- Exhibit 84, why did you  
3                   send a report -- why did you send -- why  
4                   did 21st Century send this report to the  
5                   marketer?

6                   A            To get me what I need on the  
7                   status.

8                   Q            Okay. So in other words,  
9                   you -- the reason you sent this report is  
10                  because there's a status column and you  
11                  wanted the marketer to follow up on the  
12                  status?

13                  A            Correct.

14                  Q            Okay.

15                  A            Because we cannot get in  
16                  contact with them.

17                  Q            Were you concerned that the  
18                  marketer was going to see how much money  
19                  you were making on your medications?

20                  A            No.

21                  Q            Didn't matter to you?

22                  A            No.

23                  Q            Okay. And that calculation in  
24                  the final column, did that have anything to  
25                  do with the marketer?

1 Albert Alishayev

2 A No.

3 Q Okay. And was Dr. Halioua a  
4 doctor that Paul Dantes, Tops, Angela  
5 Dantes and Dantes and Dantes connected 21st  
6 Century with?

7 A Yeah.

8 Q Okay. So this -- and so was  
9 this a doctor that was producing for 21st  
10 Century?

11 A Yes.

12 Q Okay. And so did Tops and --  
13 and the Dantes -- were they recognized for  
14 the success of getting prescriptions for  
15 Dr. Halioua?

16 A What do you mean?

17 Q Well, did they get any benefit  
18 from Dr. Halioua writing a prescription?

19 A No, they got a flat fee.

20 Q They got no benefit  
21 whatsoever?

22 | A No .

23 Q Okay. Well, I take it, they  
24 got to continue to work with 21st Century?

25 A No longer working with me, no.

4                   A                   Because they're just not  
5 working with me.

6 Q Why not?

7                   A                   I don't know, just not  
8 working.

9 Q Do you have any idea why  
10 they're not working with you anymore?

## 11 A A lot of issues.

12 Q Well, like what?

13                   A                   Not getting reports, just  
14                   they're -- their doctors are not giving me  
15                   what I need.

16 Q What do you mean they're not  
17 giving you what you need?

18 A Verification reports, initial  
19 reports, I'm not getting paid.

20 Q You're not getting -- the  
21 doctors are no longer producing?

22 A Right.

23 Q So you stopped working with  
24 them?

25 A Right.

1                   Albert Alishayev

2                   Q            How is -- how is the document  
3                   that's attached to Exhibit 85 created,  
4                   what's the source of this document?

5                   A            One of the employees.

6                   Q            Okay. From what -- I take  
7                   it's from data that 21st Century maintains?

8                   A            If it's data maintained, no.

9                   Q            What --

10                  A            Maybe it was the only one that  
11                  was made, maybe one or two, that's it.

12                  Q            You're saying there's only one  
13                  or two documents like this exhibit?

14                  A            Yeah.

15                  Q            That exist, there aren't any  
16                  others?

17                  A            I don't think so.

18                  Q            Where did they get this  
19                  information from that created this  
20                  spreadsheet?

21                  A            From our system.

22                  Q            Okay. From what system?

23                  A            My Micro Merchant.

24                  Q            So Micro Merchant can generate  
25                  the data that's reflected in this report,

1 Albert Alishayev

2 correct?

3 A Not totally.

5 A This has to be done manually.

6 Q All right. Which of the  
7 columns that are in Exhibit 85 have to be  
8 created manually?

9 | A Everything.

10 Q All of the columns on

11 | Exhibit 85 have to be created manually?

12 A Yes.

13 Q So someone by hand typed out  
14 Exhibit 85?

15 A Right.

16 Q This was not -- this was not a  
17 spreadsheet that was generated by a  
18 computer?

19 A No. My computer won't tell me  
20 needs insurance information.

21 Q Okay. So you -- the testimony  
22 is, is that, that this chart that's here  
23 was typed up by hand?

24 A yeah

25 | O All right. The spreadsheet

1                   Albert Alishayev  
2   refers this, you see it says attachment dot  
3   XLS? On the first -- first page.

4                   Do you know what an XLS  
5   extension means when it's connected to a  
6   document name?

7                   A           No. What is it?

8                   Q           You don't know?

9                   A           No.

10                  Q           Okay.

11                  A           Excel?

12                  Q           Well, do you know whether it  
13 means Excel or not?

14                  A           Yeah.

15                  Q           All right. If we take a look  
16 at Exhibit 86, Exhibit 86 has one, two,  
17 three, four, five, six, seven, eight Excel  
18 spreadsheets attached to it, each with a  
19 different doctors name.

20                  Do you see that?

21                  A           Mm-hmm.

22                  Q           So in fact, there are eight  
23 different reports?

24                  A           Okay.

25                  Q           For each of the different

1                   Albert Alishayev

2                   doctors, correct?

3                   A               Right.

4                   Q               All right. So does that alter  
5                   what you're saying, are there in fact  
6                   reports like these generated on a regular  
7                   basis for each of the doctors who worked  
8                   for 21st Century?

9                   MR. HORN: Objection.

10                  You can answer.

11                  A               No.

12                  Q               No. So are you saying the  
13                  ones that are Exhibit 85 and the ones that  
14                  are Exhibit 86, are the only ones that were  
15                  ever created by 21st Century that --

16                  A               Only the ones I'm concerned  
17                  about, yes.

18                  Q               Well, are they the only ones  
19                  that were ever created?

20                  A               I believe so, yes.

21                  Q               All right. Why were the ones  
22                  that were Exhibit 86 sent to Tops?

23                  A               Because he was representing  
24                  him.

25                  Q               So all of the doctors that are

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1                   Albert Alishayev

2       in Exhibit 86, these are doctors -- these  
3       are all doctors that Tops connected you  
4       with, correct?

5                   A           Hold on. (Perusing). Yes.

6                   MR. HORN: Don't guess, if you  
7       know.

8                   A           Yes.

9                   Q           All right. Is all of the  
10       information that's in Exhibit 85 and  
11       Exhibit 86, in the Micro Merchant system of  
12       21st Century?

13                   MR. HORN: I'm sorry?

14                   A           Sorry?

15                   MR. HORN: Can you -- yeah, I  
16       didn't.

17                   Q           Is all of the information that  
18       is in the charts that are in Exhibit 85 and  
19       86 in the Micro Merchant system of 21st  
20       Century?

21                   A           I'm not understanding you.

22                   Q           Is all of the data, the  
23       information that goes into the charts --

24                   A           You mean these pages, mm-hmm.

25                   Q           -- is that in the Micro

1                   Albert Alishayev

2                   Merchant system of 21st Century?

3                   A            Yeah.

4                   MR. HORN: And the charts  
5                   we're talking about are 85 and 86.

6                   Q            And the charts which are  
7                   Exhibit 85 and 86?

8                   A            Yeah.

9                   Q            Okay.

10                  A            That's the only system we  
11                  have.

12                  Some of these doctors don't  
13                  care if you get paid or not, they just send  
14                  you the script and --

15                  MR. HORN: Don't keep talking,  
16                  just answer questions.

17                  (One-page email chain  
18                  previously marked for identification  
19                  as Exhibit 67.)

20                  Q            Showing you what has been  
21                  previously marked as Deposition Exhibit  
22                  No. 67.

23                  This is an email from Sabrina  
24                  Loduca, who we've previously indicated is  
25                  with Exit Marketing.

1                   Albert Alishayev

2       through it in more detail, but I'm trying  
3       to sort of be more efficient here; so is  
4       that --

5                   A            Yeah.

6                   Q            All right. So do you know --  
7       in other words, when I say that, you know,  
8       he came in, you would have had a  
9       probationary period with him, he would have  
10      gotten through the probationary period, if  
11      he was performing you would have continued  
12      to work with him, if his doctors stopped  
13      producing you would have stopped working  
14      with him.

15                   Is that a fair description?

16                   A            Correct.

17                   Q            So when I talk about your  
18       relationship with marketers, and we're  
19       going to talk about a few of them, that  
20       relationship holds true with all the  
21       marketers or networkers you worked with,  
22       correct?

23                   A            Correct.

24                   Q            And Tommy Novakov as well as  
25       all the others, true?

1                   Albert Alishayev

2                   A           Yeah.

3                   Q           So with respect to Tommy  
4                   Novakov, do you know what doctors, clinics  
5                   or locations that Tommy Novakov dealt with?

6                   A           Don't.

7                   Q           Do you know anything about  
8                   Tommy Novakov's dealings, communications  
9                   with doctors, clinics or locations?

10                  A           No.

11                  Q           Are there any documents that  
12                  21st Century has that reflect that anything  
13                  Tommy Novakov did or Tommy Novakov Business  
14                  Services did for 21st Century?

15                  A           No.

16                  Q           Are you aware of whether Tommy  
17                  Novakov or Novakov Business Services paid  
18                  any kickbacks or had any other financial  
19                  arrangements that produced prescriptions?

20                  A           No.

21                  Q           Has the relationship with  
22                  Tommy Novakov and Novakov Business Services  
23                  ended?

24                  A           Yes.

25                  Q           Okay. Why did it end?



1

## C E R T I F I C A T I O N

3

STATE OF NEW YORK )

: ss. :

5

**COUNTY OF NEW YORK**

6

I, BRITTANY SALINE, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein  
set forth was duly sworn by me.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 27th day of September, 2019.

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Brittney Saline

## BRITTANY SALINE